

Matter of Williams
Del. Supr. No. 151, 2002 (8/20/02)
Board Case Nos. 37 and 51, 2001

Disciplinary Rules Involved: DLRPC 1.15(a), 1.15(b), 1.15(d), 1.15(h),
8.1(a), 8.4(d); DLRDP 7(4)

Sanctions Imposed: Public Reprimand; Limitations on Practice;
Closure of Solo Practice

By Opinion dated August 20, 2002, the Delaware Supreme Court sanctioned Mr. Williams and imposed a public reprimand, as well as certain terms, conditions, and limitations on Mr. Williams' future practice. Mr. Williams has been a member of the Delaware Bar since 1959. It has been mandated by the Court that Mr. Williams will close his solo practice no later than December 31, 2002.

Mr. Williams stipulated to the following admissions of fact and violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules"). The Court found that these violations did take place.

Safekeeping of Client Funds

Rule 1.15(a) requires that a "lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property." Mr. Williams' escrow accounts contained negative client balances. The negative client balances for the period January - June 2001 were the result of Mr. Williams making withdrawals from his General Trust Account for fees or the recovery of expenses prior to the receipt and deposit of client funds. By withdrawing funds from a pooled escrow account before the receipt and deposit of those funds, Mr. Williams violated Rule 1.15(a).

Payroll Taxes

Rule 1.15(b) states that "a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property." By failing to promptly deliver to third persons funds that the third persons were entitled to receive, including failing to pay various federal and state employee and employer payroll taxes owed for his law practice in a timely manner during the period extending from June 30, 2000 through April 2001, Mr. Williams violated Rule 1.15(b).

Books and Records

Rule 1.15(d) sets forth detailed and specific requirements for the maintenance of attorneys' books and records, including the handling of fiduciary and non-fiduciary funds. Negative client balances indicated that Mr. Williams was not properly maintaining the books and records of his law practice. By failing to properly maintain the books and records of his law practice, Mr. Williams violated Rule 1.15(d).

"Good Funds"

Rule 1.15(h) prohibits a lawyer from disbursing funds from an escrow account unless the funds deposited in the account are "good funds," including cash, electronic ("wire") transfer, bank cashier's check or treasurer's check, U.S. Treasury or State of Delaware Treasury check, check drawn from the fiduciary account of a Delaware attorney, check of an insurance company authorized to transact business in Delaware, check in an amount no greater than \$2,000, check greater than \$2,000 which has been actually and finally collected, and check drawn upon the account of a real estate broker licensed by the State of Delaware up to the limit of guarantee provided per transaction by 24 *Del. C.* § 2922. By making withdrawals from an escrow account when "good funds" had not been deposited to cover those withdrawals, Mr. Williams violated Rule 1.15(h).

Conduct Prejudicial to the Administration of Justice

Rule 8.4(d) provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." By failing to pay various state and federal taxes, Mr. Williams violated Rule 8.4(d).

Violation of a Supreme Court Order of Probation

Former Board on Professional Responsibility Rule 7(4) stated that discipline may be imposed for "violation of any discipline or disability rule or order." [Effective March 9, 2000, the Rules of the Board on Professional Responsibility ("Board Rules") were amended. The new rules are called the Delaware Lawyers' Rules of Disciplinary Procedure ("Procedural Rules"). The Procedural Rules were effective immediately. Nevertheless, the petition stated Mr. Williams' violation of former Board Rule 7(4) because that rule was in effect at the time of the violation. Procedural Rule 7(c) is substantially similar to former Board Rule 7(4).] By failing to maintain his books and records in compliance with Rule 1.15 during the probation period, by failing to file reports when due, and by submitting reports that stated his books and records were in compliance when they were not, Mr. Williams violated the Williams Probation Order and former Board Rule 7(4).

False Statement of Material Fact to the ODC

Rule 8.1(a) states that a lawyer "in connection with a disciplinary matter, shall not knowingly make a false statement of material fact." By stating, in response to the ODC inquiry, that he had not represented a client when he had entered his appearance on behalf of that individual in the Court of Common Pleas, Mr. Williams violated Rule 8.1(a).

Aggravating Factors

PRIOR DISCIPLINARY RECORD. Private admonition in 1988 for violations of books and records requirements and the rules related to conflicts of interest and adequate preparation for handling a representation; the imposition of a public reprimand in 1989 for violations of books and records requirements and the rules related to certifications to the Delaware Supreme Court; and the imposition of a public reprimand with a public probation for a period of 18 months in 1998 for violations of books and records requirements and the rules related to certifications to the Delaware Supreme Court, as well as his failures to pay various forms of taxes and engaging in conduct prejudicial to the administration of justice with respect to his failure to properly protest or pay a number of City of Wilmington parking tickets.

SUBSTANTIAL EXPERIENCE. Mr. Williams has substantial experience in the practice of law, having practiced since 1959.

PATTERN OF MISCONDUCT. Mr. Williams has engaged in a pattern of misconduct, involving his failures to abide by his obligations to properly maintain his law practice accounts, books and records and to properly manage his law practice as a solo practitioner.

MULTIPLE VIOLATIONS. Mr. Williams has committed multiple violations of the Rules.

Mitigating Factors

NO DISHONEST OR SELFISH MOTIVE. Mr. Williams's misconduct does not reflect any dishonest or selfish motive.

COOPERATION. Mr. Williams cooperated with the ODC and has made full and free disclosure to the Board.

RECOGNIZED AS A COMMUNITY LEADER. Mr. Williams is a community leader who has an outstanding reputation and character as a member of the Delaware legal community.

RESTITUTION. Mr. Williams deposited personal funds into his trust accounts to resolve any negative balances.

REMORSE. Mr. Williams is sincerely remorseful for the misconduct.

CONDITIONS/LIMITATIONS ON PRACTICE

1. Mr. Williams will close his solo law practice as of December 31, 2002.
2. As of December 31, 2002, Mr. Williams will never again practice as a solo practitioner.
3. As of February 28, 2002, Mr. Williams will never again have responsibility for the financial recordkeeping requirements imposed by Rule 1.15. Mr. Williams has delegated all financial recordkeeping obligations, including the sole right to issue checks from Mr. Williams' operating and trust accounts, to a member in good standing of the Delaware Bar approved by the ODC.

4. As of February 28, 2002, all monies and funds related to Mr. Williams' law practice will be processed through the operating and trust accounts of his law practice in accordance with Rule 1.15. Mr. Williams will not have any access to any funds, including not having check-writing privileges. This condition and limitation on Mr. Williams' practice is permanent, such that if Mr. Williams ever affiliates himself with a law practice other than his solo practice, Mr. Williams must maintain the same restrictions on his access to funds and recordkeeping obligations.

5. For as long as he remains on active status as a member of the Delaware Bar, Mr. Williams shall submit to the ODC on at least an annual basis a detailed certification regarding filing and payment of all taxes he is obligated to file and pay. The certification shall be signed by Mr. Williams and by an accountant to be approved by the ODC. The certificates shall be filed on or before April 30 of each year, with the first certificates due on or before April 30, 2002.

6. For as long as he remains in solo practice, on or before the 20th of each month, Mr. Williams shall file with the ODC an affidavit by a licensed certified public accountant, to be approved by the ODC, that all of Mr. Williams' books, records and bank accounts have been maintained, during the preceding month in full compliance with Rule 1.15.

7. Mr. Williams shall cooperate promptly and fully with the ODC in its efforts to monitor compliance and promptly respond to the ODC's correspondence by the due date. Mr. Williams shall cooperate with the ODC's investigation of any allegations of unprofessional conduct which may come or already have come to the attention of the ODC. Upon the ODC's request, Mr. Williams shall provide authorization for release of information and documentation to verify compliance with the Rules.

8. If the ODC concludes, after giving Mr. Williams an opportunity to respond, that Mr. Williams has violated the terms of the sanctions imposed, the ODC may file a petition directly with the Delaware Supreme Court requesting that the Court suspend Mr. Williams. Mr. Williams will not oppose said interim suspension.

7. Mr. Williams agrees to the expedited handling of disciplinary matters.